

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 23699 of 2014
and M.P.No.1 of 2014

Ashok Leyland Ltd,
Rep. By its Head-Human Resources,
Ashok Leyland Limited,
Ennore, Chennai - 600 057.

.. Petitioner

Vs.

1. The Commissioner for
Workmen's Compensation II,
Deputy Commissioner of Labour II,
Tamil Nadu Labour Welfare Board Building
DMS Compound, Teynampet,
Chennai - 600 006.

2. T. Munusamy

3. FGA Enterprises,
Now known as Sam Enterprises,
Rep. By Mr.Chandran
8 Peria Kasi Koil Kuppam,
Eranavur, Chennai - 600 057.

...Respondents

Prayer : Writ petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records of the first respondent in EC IA No.39
of 2013 and quash its order dated 29.10.2013.

For Petitioner : Mr.Anand Gopalan
for M/s. T.S. Gopalan & Co

For Respondents : Mr. J.Ramesh
Additional Government Pleader [R1]
Mr. K.Chairman Selvaraj [R2]
R3- Not ready in Notice.

O R D E R

The order dated 29.10.2013 passed by the first respondent in EC IA.No. 39 of 2013 is under challenge in the present writ petition.

2. The learned counsel for the petitioner states that the petitioner is engaged in the manufacture of trucks and other commercial vehicles in one of its factories at Ennore near Chennai. The petitioner factory is registered under the Factories Act and also covered under the Employees State Insurance Act (hereinafter referred to as ESI Act). All the eligible employees, whether directly employed or through the contractor, are covered under the ESI Act. The petitioner maintains its records only for a period of 5 years and in respect of some tax matters upto 8 years. The second respondent caused a lawyer's notice dated 25.07.2012 alleging that he was taken into employment temporarily as a contract worker through 3rd respondent and he was working from June 1994 as a house keeping worker. While so, on 06.11.1996 in the packing section a permanent workman hammered a metal piece and a broken piece flew off and hit his eye, that he was shunted to ESI, that later on he had taken treatment in Shankara Nethralaya hospital and that as a result of the accident, he lost one of his eyes. As per lawyer's notice, he was getting a salary of Rs.160/- per day, that as he was assured of financial assistance, he did not take any legal steps to make a claim for compensation and therefore a notice was issued.

3. The writ petitioner company sent a reply stating that there was no record to show that the second respondent was employed in the service of the petitioner, that he was employed in an establishment having ESI code Number 57050, which was the code number of the 3rd respondent, that if the accident was true and he suffered an employment injury resulting in disablement, he could make a claim for disablement benefit under the ESI Act from the ESI Corporation and the writ petitioner would not be liable to pay any compensation to the second respondent. Subsequently, the second respondent filed a petition before the first respondent under the Workmen Compensation Act.

4. The learned counsel for the petitioner states that the petition is filed after a lapse of 16 years, 4 months and 8 days from the date of accident. Thus, the petition itself cannot be entertained by the first respondent. Apart from the huge delay of more than 16 years, the first respondent Commissioner under Workmen Compensation Act has no jurisdiction to entertain any petition, as the second respondent is a member of the ESI and he was getting the benefit under the ESI Act.

5. To substantiate the said contention, the learned counsel for the writ petitioner states that the petition filed by the second respondent before the first respondent reveals that the second respondent is a member of ESI. The petitioner has stated in his petition that he was treated so badly by the first and second respondents, the injured eye became septic and rotten, then shunted to ESI at the instigation of first and second respondents. Apart from the submission made by the petitioner in the petition, the sickness slip issued by the ESI Dispensary is produced by the petitioner by way of typed set of papers. On a perusal of the said records, the same reveals that the second respondent has availed the benefit of the Employees State Insurance.

6. In this regard, Section 53 of the Employees State Insurance Act, 1948 provides bar against receiving or recovery of compensation or damages under any other law and Section 53 of the ESI Act is extracted hereunder:

"Section 53- Bar against receiving or recovery of compensation or damages under any other law. An insured person or his dependents shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act."

7. When there is a bar in the statute to claim any benefits, if the employee is already availing the benefit under the ESI Act, then the petition filed under Workmen Compensation Act cannot be entertained. Thus, this Court has no hesitation in coming to the conclusion that the petition filed before the first respondent under the Workmen Compensation Act is not entertainable and this apart, the petition itself was filed after a lapse of more than 16 years from the date of alleged incident and hence, the writ petition is to be considered in favour of the writ petitioner.

Accordingly, the order dated 29.10.2013 passed in EC IA.No.39 of 2013 is quashed and writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

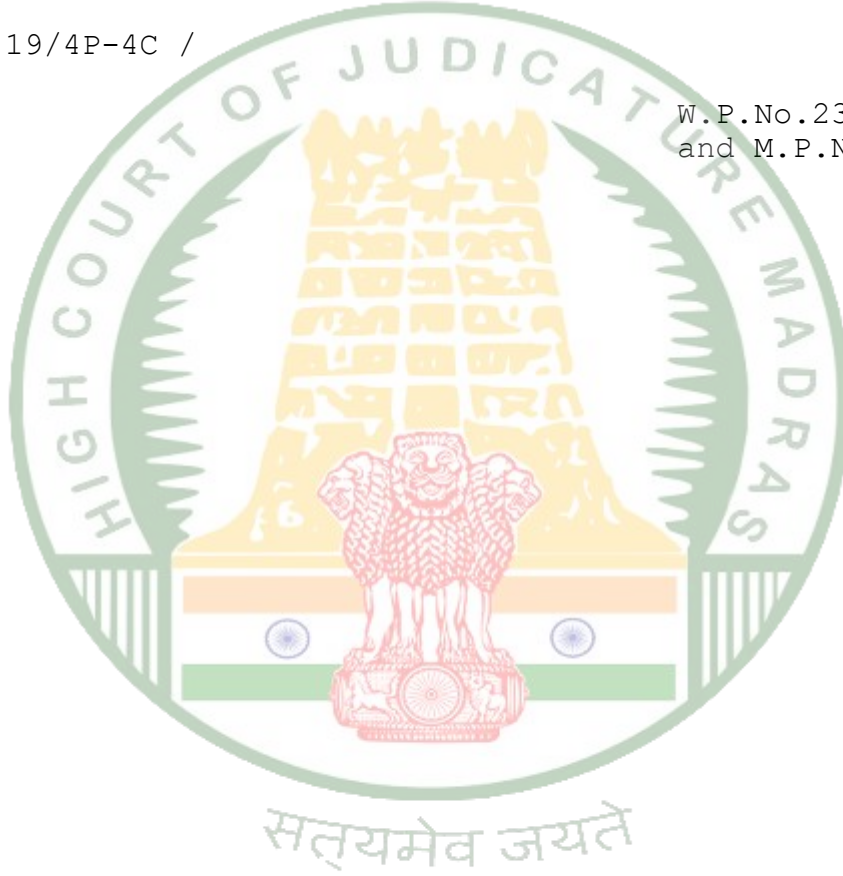
To

The Commissioner for
Workmen's Compensation II,
Deputy Commissioner of Labour II,
Tamil Nadu Labour Welfare Board Building
DMS Compound, Teynampet,
Chennai - 600 006.

+1 cc to M/s.T.S.Gopalan & Co,Advocate Sr.No. 90926
+1 cc to The Government Pleader Sr.No. 91546

AKM/04.12.19/4P-4C /

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